

Sales Tax Exemptions Review

Number: PETITION

Date: June 08, 2004

The Honorable Harry Lee Anstead
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On May 27, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to require a legislative determination that sale tax exemptions and exclusions serve a public purpose. The full text of the proposed amendment states:

"BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

ARTICLE III of the Florida Constitution is hereby amended to add the following as Section 20:

Legislative review and enactment of exemptions and exclusions from the sales tax.--

(a) FAIRNESS INITIATIVE. Except for the current exemptions provided for: food; prescription drugs; health services; and residential rent, electricity and heating fuel, which secure tax fairness, the legislature shall, prior to July 1, 2007, and prior to the first day of July for each tenth year thereafter, review all exemptions and services or transactions excluded from the sales tax existing on or created subsequent to the effective date of this amendment. The Legislature shall reenact only those exemptions or adopt and continue only those exclusions that advance or serve the public purpose of: encouraging economic development and competitiveness; supporting educational, governmental, literary, scientific, religious, or charitable initiatives or institutions; or securing tax fairness. All exemptions or exclusions that are not reenacted or adopted and continued by the adoption of a law in conformity with the enactment requirements provided in this section shall be eliminated effective January 1 subsequent to the July 1 deadline established in this section for the review of all exemptions and exclusions. Each law creating or reenacting a sales tax exemption or creating or continuing an exclusion shall require approval by three-fifths vote of the membership of each house of the Legislature, shall contain the single subject-matter of a single exemption or a single exclusion and shall contain a factual determination that each exemption or exclusion advances or serves a public purpose as enumerated in this section.

(b) CONSTRUCTION. For purpose of this section:

(1) The term sales tax shall mean the tax on sales, use and other transactions levied by the state or authorized to be levied by a local government in chapter 212, Florida Statutes, as of January 1, 2003, except that the term sales tax shall not include the convention development tax, the local option food and beverage tax or the rental car surcharge provided in sections 212.0305, 212.0306, or 212.0606, Florida Statutes, or the taxation of: the sales of tangible personal property purchased for resale or imported, produced, or manufactured in this state for export; sales of real property; sales of intangible personal property; payment of employee salaries and benefits; or transactions subject to the communications services tax imposed in chapter 202, Florida Statutes.

(2) The term "exclusion" and the phrase "a service or transaction excluded from the sales tax" shall mean a sale or use of tangible personal property or the rendering of services for consideration that is not subject to the sales tax and not specifically exempted on the effective date of this amendment.

(3) To satisfy the enactment limitation of this section that each law shall contain only the single subject-matter of a single exclusion, each law adopting or continuing an exclusion from the sales tax shall include or reference the sale or use or the rendering of a service by a business, industry or profession with at least the same first four digits in its NAICS code number as described by the North American Classification System code published by the United States Census Bureau, or its successor in function.

The ballot title for the proposed amendment is "Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve A Public Purpose." The summary for the proposed amendment states:

"The Legislature shall periodically review sales tax exemptions or excluded services and transactions except: food; prescription drugs; health services; and residential rent, electricity, and heating fuel; and shall continue or create only exemptions or exclusions serving a defined public purpose. Each law shall contain the single subject of a single exemption or exclusion and be approved by three-fifths vote of each legislative house. Exemptions and exclusions not reenacted or adopted by the Legislature are eliminated.

Article XI, section 3, Florida Constitution, provides in relevant part:

"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

As the Court recently stated, "[t]his single-subject requirement 'allow[s] the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.'" *Advisory Opinion to the Attorney General -- Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, Case No. SC03-857 (Fla., filed May 13, 2004),

quoting *Fine v. Firestone*, 448 So. 2d 984, 993 (Fla. 1984). The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General -- Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Advisory Opinion to the Attorney General -- Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, *supra* at 990 ("in determining whether a proposal addresses a single subject the test is whether it 'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme'"). This Court stated in *Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has recognized that "[t]his requirement provides the voters with fair notice of the contents of the proposed initiative so that the voter will not be misled as to its purpose and can cast an intelligent and informed ballot." *Advisory Opinion to the Attorney General -- People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1307 (Fla. 1997); *Advisory Opinion to the Attorney General -- Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, Case No. SC03-857 (Fla., filed May 13, 2004).

Thus, this Court stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Senator John McKay
Chair, Floridians Against Inequities in Rates